

Commercial Contract

DATA PROVIDER AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

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Pro-Gole (Right to do Business)

Legal Services (B&SDS)

LEGAL SERVICES, SMEDA

The Legal Services (LS) department is a part of Business & Sector Development Services Division of the Small Medium Enterprises Development Authority and plays a key role in providing an overall facilitation and support to the small businesses. The LS believes that information dissemination among the small businesses on the existing legal & regulatory environment and business to business and business to client contracting is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate small businesses, the LS, under the Pro-GOLE (Right to do business) project, a joint SMEDA-UNDP initiative for supporting the small businesses, has developed user-friendly contract templates.

Pro-GOLE, (Right to do Business)

The UNDP has partnered with the Small and Medium Enterprises Development Authority to initiate and execute the Pillar 4 (Right to do business) component of the UNDP PRO-GOLE project which seeks to enhance the legal awareness and mobility of marginalized/ informal businesses. Under the project legal services outreach shall be extended to small businesses including home based enterprises, small shopkeepers, growers, women entrepreneurs, hawking vendors etc. In addition, small business shall be mobilized to access legal services.

The Need for Commercial Contracts Templates

In an increasingly complex and competitive industry, it is vital that suppliers and purchasers are fully protected against legal and commercial risks. To counter such risks, a viable solution; available as- of the shelf commercial contract templates- will provide the users with first class ready to use support. With obligations properly set out and liabilities accurately defined, the users will be in a far better position to look after their rights and interests and move forward from their marginalized positions to being active players of the economy. The Legal Service Providers can equally take benefit of these templates for their professional and business development.

Disclaimer

The information contained in this template is meant to facilitate the businesses in documenting transactions with reference to internet and technology. However, SMEDA, UNDP or any of their employees or representatives accept no responsibility and expressly disclaim any and all liabilities for any and all losses/shortfalls caused by or motivated by recommendations from the information contained within this document. Although SMEDA's ambition is to provide accurate and reliable information; yet, the document is not an alternative to expert legal advice and should ideally be used in conjunction with the same. Any person using this document and or benefiting from the information contained herein shall do so at his/her own risk and costs and be deemed to have accepted this disclaimer.

All information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

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10. DATA PROVIDER AGREEMENT

THIS DATA PROVIDER AGREEMENT (hereinafter referred to as the "Agreement") is entered into at [insert place] on this ____ (insert date) day of _____ (insert month), 20__,

BY AND BETWEEN:

M/s [insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

(hereinafter referred to as the "Business", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

AND

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number];

OR

M/s [insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

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(hereinafter referred to as the "Data Provider", which expression shall, wherever the context so provides, include its heirs, assigns, nominees, agents and successors-in-interest).

(The Business and the Data Provider are hereinafter collectively referred to as the "Parties" and individually as the "Party".)

WHEREAS the Business desires to introduce a portfolio of on-line computer services to its customers which will include [insert description of services] (hereinafter referred to as the "Services"), and to promote and exploit as part of the Services certain data owned and licensed by the Data Provider (hereinafter referred to as the "Data").

AND WHEREAS the Data Provider has agreed to make the Data available to the Business for use pursuant to the terms and conditions of this Agreement.

NOW THEREFORE the Parties have entered into this Agreement on the following terms and conditions:

1. TERM

The Term of the Agreement shall commence on the date of execution of the Agreement, and shall continue for a period of [insert number] years unless terminated earlier by either of the Parties in accordance with the terms of this Agreement.

2. LICENSE TO EXPLOIT THE CONTENT

- (1) Subject to the terms of this Agreement, the Data Provider hereby grants to the Business a worldwide license to use, copy, display and perform (privately and publicly), publish, transmit, distribute, sublicense and exploit the Data in whole or in part, separately or together with the Data Provider Trademarks, on or in connection with the Services in any medium, now known or hereafter devised.
- (2) Without limitation of the foregoing, the rights granted to the Business under this Agreement include the following:
 - (i) the right to enter the Data and the Data Provider Trademarks into the Business' files, storage space and databases;
 - (ii) the right to store, process, retrieve and transmit and to authorize others to store, process, retrieve and transmit the Data and the Data Provider Trademarks on or in connection with the Services in any manner or media;
 - (iii) the right to reasonably juxtapose and combine the Data with the materials owned and/or controlled by the Business, and/or by third parties for the purpose of using the same in connection with the Services; and

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- (iv) the right to offer to the Business' subscribers the option of printing and downloading, for personal use, all or any portion of the Data and the Data Provider Trademarks.

3. EXCLUSIVITY

- (1) The Data Provider warrants and represents that the Data has not previously been used, displayed, performed, published, transmitted, distributed, advertised, demonstrated, promoted or otherwise exploited, directly or indirectly, by or to the public, in connection with any on-line service; and that during the term of this Agreement, the Data will not be used, displayed, performed, published, transmitted, distributed, advertised, demonstrated, promoted or otherwise exploited in any manner, directly or indirectly, by or to the public, in connection with any on-line service except as specifically authorized by the terms of this Agreement.
- (2) The Business and the Data Provider acknowledge and agree that the breach of this Clause by the Data Provider shall entitle the Business to injunctive relief for breach thereof.
- (3) The Data Provider shall have the right to create and/or maintain its own website for any corporate purpose which is not competitive with the Services provided by the Business, except that the Data Provider may provide technical support for the Data and promote and advertise the Data and the Services on its website.

4. SUPPLY OF CONTENT

Data Provider shall furnish the Data to the Business in accordance with the delivery schedule stated in Schedule I of this Agreement.

5. REVENUES AND PAYMENT

- (1) The Business shall pay to the Data Provider, at the time of execution of this Agreement, an amount of Rs. ____/- (Rupees _____) (insert amount) (hereinafter referred to as the "Fees") in consideration of the Data Provider granting the license to the Business to use the Data.
- (2) In addition to the Fees, the Business shall also pay to the Data Provider [insert percentage]% of the revenues derived from charges to the subscribers for having access to the Data. Any payments under Clause 5 (1) shall be made to the Data Provider by the Business immediately upon the Business receiving the payments from the subscribers.

6. MARKETING MATERIALS

The Business shall be solely responsible for the marketing and promotion of the Services of the Data provided by the Data Provider, and the Data Provider shall not be required to reimburse the Business for any charges incurred in this respect.

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7. NON-SOLICITATION

The Data Provider agrees that during the term of this Agreement, it shall not directly or indirectly provide any content, related in any respect thereof to the Data, for use on an on-line service, nor shall it solicit or enter into any negotiations or agreements with any on-line service provider concerning the possibility of providing any content relative to the Services.

8. TERMINATION

- (1) In the event that the Business fails to maintain its good corporate standing, the Data Provider, at its sole discretion, may immediately terminate this Agreement.
- (2) Upon the termination or expiration of this Agreement, all rights (including the right to use the Data) privileges and obligations arising out of this Agreement shall cease to exist.
- (3) Upon termination of this Agreement, the Data Provider shall allow to the Business [insert number] days to cease all use of the Data, and the Data Provider Trademarks.
- (4) The Business agrees to discontinue the use of the Data upon termination of this Agreement as quickly as practicable, and in no event longer than [insert number] months after the expiry/termination of the Agreement.

9. ASSIGNMENT

Neither Party hereto may assign, convey or otherwise transfer any of its rights, obligations, or interest herein without prior express written consent of the other Party.

10. INDEPENDENT BUSINESS RELATIONSHIP

- (1) The Business and the Data Provider are independent contractors, and nothing contained in this Agreement shall be construed to be a relationship of joint venturers, partners, employer/employee, or agency between the Parties.
- (2) Neither Party shall have the power to bind or obligate the other, except as set forth in this Agreement.

11. FORCE MAJEURE

- (1) Force Majeure shall mean any event that is beyond the reasonable control of a Party, or the effects of which adversely affect the performance by such Party of its obligations under this Agreement, including, but not limited to, acts of God, sabotage, insurrection, terrorism, riots, hostilities or war (whether declared or not), acts of the public enemy, civil disturbances, any kind of fire, explosion, flood or accidental damage, epidemics, landslides, washouts, lightening, storms, earthquakes,

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lockouts, blockades, shortage of labor or material, major equipment failure, or other causes beyond the control of the Party affected.

- (2) Notwithstanding anything contained hereinabove, neither Party shall be liable to the other if it is unable to perform any of its obligations under this Agreement due to the occurrence of Force Majeure.
- (3) The Party affected by the Force Majeure event shall be entitled to suspend performance of its obligations under the Agreement to the extent that such performance is impeded or made impossible by the events of Force Majeure.
- (4) Each Party shall give a notice within [insert number] days of the occurrence of the event of Force Majeure and shall promptly thereafter consult the other Party for the purpose of finding a mutually acceptable solution to the Force Majeure event.

12. GOVERNING LAW AND EXCLUSIVE JURISDICTION

This Agreement in all respects be read and construed and shall operate as a contract, in conformity with the laws of [insert country], and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

13. SETTLEMENT OF DISPUTE

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

14. MISCELLANEOUS

- (1) This Agreement represents the complete agreement between the Parties with regard to the subject matter and supersedes any prior understanding or agreements, oral or written.
- (2) This Agreement may be amended or revised only by an instrument in writing signed by either the Parties or their duly authorized representatives.
- (3) No provision hereof or breach of any provision may be waived except by a written waiver, signed by the waiving Party. No waiver of any right under or breach of this Agreement shall be construed to be a waiver of any other right or breach under the Agreement.
- (4) Any provision of this Agreement which is prohibited or unenforceable under any law, rule or regulation applicable in

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Pakistan for the time being shall be ineffective only to the extent of such prohibition or lack of enforceability, and shall not invalidate the remaining provisions hereof.

IN WITNESS WHEREOF, the Parties have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

For and on behalf of
The Licensor

For and on behalf of
The Licensee

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

**SCHEDULE I
DELIVERY SCHEDULE**